

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

RICKY DARREL GUINN, #1387919	§	
VS.	§	CIVIL ACTION NO. 2:07cv465
DIRECTOR, TDCJ-CID	§	

O R D E R

The above-entitled and numbered civil action was referred to United States Magistrate Judge Charles Everingham, IV, who issued a Report and Recommendation concluding that the Director's motion to dismiss the petition as untimely should be denied. The Director has filed objections.

The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Director to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Director are without merit.

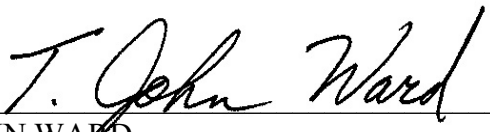
The Director's objections hinge on an argument that the Petitioner's conviction became final on the day the judgment was entered because he waived his right to appeal. The provisions of 28 U.S.C. § 2244(d)(1)(A) provide that a "judgment becomes final by the conclusion of direct review or the expiration of the time for seeking such review." The Petitioner did not appeal his conviction, thus the conviction became final thirty days later on the expiration of the time for filing a notice of appeal. *Egerton v. Cockrell*, 334 F.3d 433, 435 (5th Cir. 2003); *Scott v. Johnson*, 227 F.3d 260, 262 (5th Cir. 2000). The Director failed to cite any decisions by federal courts where his argument was accepted, however, this Court and other district courts in Texas have rejected the argument. *See Russ v. Director*, No. 6:07cv56, 2007 WL 2077381 (E.D. Tex. July 18, 2007) (no appeal); *McCollum v. Quarterman*, No. 4:07cv906, 2007 WL 2428293 (S.D. Tex. Aug. 21, 2007) (no appeal); *Novak v. Quarterman*, No. 4:07-CV-043-A, 2007 WL 1953439, at \*3 n.2 (N.D. Tex. June 26, 2007), *appeal dismissed*, No. 07-10747 (5th Cir. Dec. 17, 2007); *Hughes v. Dretke*, No. 4:04-CV-0802-Y, 2004 WL

2921841 (N.D. Tex. Dec. 15, 2004). The Petitioner was sentenced on July 31, 2006. His conviction was final thirty days later on August 30, 2006. In light of statutory tolling provisions, the present petition was due no later than November 10, 2007. It was filed in this Court on October 26, 2007. It was timely filed. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the Director's motion to dismiss the petition as untimely (docket entry #8) is **DENIED**. It is further

**ORDERED** that the deadline for the Director to file an answer on the merits of the Petitioner's grounds for relief is thirty days after the entry of this Order.

SIGNED this 13th day of March, 2008.

  
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T. JOHN WARD  
UNITED STATES DISTRICT JUDGE